

## Message Text

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DRAFTD BY: D/LOS:OESKIN

APPROVED BY: D/LOS:OESKIN

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FM SECSTATE WASHDC

TO USMISSION GENEVA

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PASS US LOS DELEGATION

FOLLOWING REPEAT MONTREAL 495 ACTION SECSTATE 17 MAR

QUOTE

UNCLAS MONTREAL 0495

FROM USREP ICAO

E. O. 11652: N/A

TAGS: PORG, EAIR, ICAO

SUBJ: ICAO - CWP/6154 ON LAW OF THE SEA

1. CWP/6154 COMES BEFORE COUNCIL MAR 26. SEVERAL COUNCIL MEMBERS HAVE PROBLEMS. IN VIEW CONFUSED POSTAL SITUATION, SUBMITTING TEXT BY TEL, HOPING FOR EARLY US POSITION.

QUOTE: RELATIONS WITH THE UN AND THE SPECIALIZED AGENCIES AND OTHER INTERNATIONAL ORGANIZATIONS. BRIEF FOR THE ICAO OBSERVER AT THE THIRD SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (GENEVA, 17 MAR - 10 MAY 1975) (PRESENTED BY THE SECRETARY GENERAL)

REF: MEMORANDUM SG 746/75 OF 28 JAN 1975.

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1. IN THE REPORT OF THE ICAO OBSERVER WHO ATTENDED THE SECOND

SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, HELD IN CARACAS LAST SUMMER, WHICH WAS TRANSMITTED TO REPRESENTATIVES ON THE COUNCIL WITH MY MEMORANDUM SG 745/75 DATED 28 JANUARY 1975, THE MAIN PROBLEMS WHICH COULD ARISE FROM AN EVENTUAL COMPREHENSIVE CONVENTION ON THE LAW OF THE SEA WERE HIGHLIGHTED. IT APPEARS ADVISABLE FOR THE COUNCIL TO CONSIDER A BRIEF FOR THE ICAO OBSERVER AT THE GENEVA MEETING WHO WILL ATTEND IT ON A PART-TIME BASIS, THE MOST SUITABLE TIME BEING TOWARDS THE LAST TWO WEEKS OF THE CONFERENCE.

2. THE ISSUES OF INTEREST FOR ICAO ARE THE FOLLOWING:

(A) EXTENSION OF TERRITORIAL SEA AND STRAITS (I) IT APPEARS THAT THERE IS A GENERAL TREND TO ALLOW THE EXTENSION OF THE TERRITORIAL SEA UP TO 12 MILES FROM THE BASE LINES. SUCH EXTENSION OF THE TERRITORIAL SEA BY ITSELF DOES NOT SEEM TO CAUSE IMPORTANT DIFFICULTIES TO THE PRESENT REGIME OF INTERNATIONAL CIVIL AVIATION. HOWEVER, SUCH EXTENSION COULD PRODUCE THE EFFECT OF CLOSING MANY STRAITS TO AIR NAVIGATION, BECAUSE THE SEA SPACE BETWEEN THE COASTS WOULD HAVE TO BE CONSIDERED AS TERRITORIAL SEA AND, CONSEQUENTLY, AS TERRITORY OF THE COASTAL STATES, ACCORDING TO ARTICLE 2 OF THE CHICAGO CONVENTION. (II) IT APPEARS ADVISABLE TO STATE IN THE CONFERENCE THAT IT WOULD BE IN THE INTEREST OF INTERNATIONAL CIVIL AVIATION TO GRANT THE FREEDOM OF FLIGHT OVER THE STRAIGHTS WHICH WOULD OTHERWISE BE CLOSED BY THE EXTENSION OF TERRITORIAL WATERS.

(B) ECONOMIC ZONE. (I) THE ECONOMIC ZONE WOULD COMPRISE AN AREA OF THE SEA UP TO 200 NAUTICAL MILES MEASURED FROM THE APPLICABLE BASE LINES FOR MEASURING THE TERRITORIAL SEA. ALTHOUGH IN THE DIFFERENT FORMULAE BEFORE THE CONFERENCE ON THE LAW OF THE SEA IT IS SAID THAT THE AIRCRAFT WOULD ENJOY FREEDOM OF OVERFLIGHT, THERE ARE TWO FEATURES WHICH WOULD MAKE THE SITUATION SOMEWHAT DIFFICULT FOR THE PRESENT REGIME OF INTERNATIONAL CIVIL AVIATION: ONE OF THEM IS THAT IT IS NOT CLEAR WHETHER THE ECONOMIC ZONE WOULD BE A PART OF THE HIGH SEAS (APPARENTLY NOT), AND THE OTHER IS THAT SUCH FREEDOM OF OVERFLIGHT WOULD BE SUBJECT TO THE RIGHTS OF THE COASTAL STATES IN THE ECONOMIC ZONE.

(II) TAKING INTO ACCOUNT THE FOREGOING, THE POWERS OF THE COUNCIL,  
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ACCORDING TO ARTICLE 12 OF THE CHICAGO CONVENTION, TO ESTABLISH COMPULSORY RULES FOR THE HIGH SEAS WOULD BE AFFECTED. REPERCUSSIONS MAINLY ON ANNEXES 2, 11, 12 AND 13 WOULD ALSO OCCUR. (III) IT APPEARS ADVISABLE FOR THE ICAO OBSERVER TO EMPHASIZE THAT IT WOULD BE IN THE BEST INTEREST OF THE REGIME OF INTERNATIONAL CIVIL AVIATION THAT FOR THE PURPOSE OF SUCH REGIME THE AIRSPACE OVER THE ECONOMIC ZONE SHOULD BE TREATED AS AIRSPACE OVER THE HIGH SEAS.

(C) ARCHIPELAGOS. (I) FROM THE FORMULAE REFERRING TO ARCHIPELAGOS, IT APPEARS THAT ALL THE WATERS COMPRISED WITHIN THE OUTER LIMITS OF THE WHOLE OF THE ISLANDS CONSTITUTING THE ARCHIPELAGIC STATE WOULD BE CONSIDERED INTERNAL WATERS AND, CONSEQUENTLY, TERRITORY OF THE STATE. THIS, IN SOME CASES, WOULD REPRESENT A BIG CHANGE WITH REGARD TO THE PRESENT SITUATION, UNDER WHICH A PART OF THE SEA BETWEEN THE ISLANDS WHICH WOULD EVENTUALLY COMPOSE THE ARCHIPELAGIC STATE IS CONSIDERED AS HIGH SEAS. (II) IT SEEMS ADVISABLE FOR THE ICAO OBSERVER TO STATE THAT IT WOULD SERVE THE INTERESTS OF INTERNATIONAL CIVIL AVIATION IF FOR THE PURPOSE OF THE SAME THE AIRSPACE OVER SUCH AREAS WOULD BE TREATED AS AIRSPACE OVER THE HIGH SEAS.

ACTION: 3. THE COUNCIL IS INVITED TO APPROVE THE SUGGESTION IN THE PROCEEDING PARAGRAPHS AS THE BASIS FOR THE ICAO OBSERVER'S BRIEF. UNQUOTE  
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